

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN AND JANE DOE NO. 1, et al.,	:	CASE NO. 3:22-cv-00337
	:	
	:	
Plaintiffs,	:	JUDGE MICHAEL J. NEWMAN
	:	
vs.	:	
	:	
BETHEL LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,	:	
	:	
Defendants.	:	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE NOTICE OF
SUPPLEMENTAL AUTHORITY**

Yesterday, the United States Supreme Court decided a case regarding a plaintiff's ability to enforce statutory rights through 28 U.S.C. § 1983. *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, No. 21-806, 599 U.S. —, 2023 WL 3872515, at *10 (June 8, 2023). Here, the Plaintiffs seek to redress, *inter alia*, violations of their rights under the Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. § 1232h. The Defendants¹ filed a Rule 12 motion seeking to dismiss, *inter alia*, the Plaintiffs' PPRA claims as unenforceable through private right of action. Defs.' Mot. to Dismiss, Doc. 79 at 1660–63.² In opposition to that motion, Plaintiffs explained that the

¹ Bethel Local School District Board of Education, Lydda Mansfield, Lori Sebastian, Natalie Donahue, Danny Elam, Jacob King, and Superintendent Matthew Chrispin.

² All page citations to ECF documents ("Doc.") herein denote the "PageID" page number.

individualized rights provided under the PPRA are properly enforceable through Section 1983. Pls.' Resp. in Opp'n to Defs.' Mot. to Dismiss, Doc. 85 at 1756–59.

Talevski is the Supreme Court's most recent opinion on the subject. And it is a substantive decision with significant analysis that should, in good conscience, be considered by the Court in resolving the issue. Therefore, consistent with practice in the Southern District of Ohio, Plaintiffs respectfully move for leave to file notice of *Talevski* as supplemental authority regarding the PPRA issue pending before the Court. *See Armengau v. Warden, London Corr. Inst.*, No. 2:19-CV-01146, 2022 WL 17484358, at *21 (S.D. Ohio Dec. 7, 2022) (discussing the practice of granting leave for supplemental authority). *See also Tera II, LLC v. Rice Drilling D, LLC*, No. 2:19-CV-2221, 2023 WL 2664415, at *5 (S.D. Ohio Mar. 28, 2023).

Dated: June 9, 2023

Respectfully submitted,

s/ Joseph P. Ashbrook
Joseph P. Ashbrook (0091279)
Julie E. Byrne (0085174)
Ashbrook Byrne Kresge, LLC
PO Box 8248
Cincinnati, Ohio 45249
Tel: (513) 582-7424
Fax: (513) 216-9882
jpashbrook@ashbrookbk.com
jebyrne@ashbrookbk.com

Nicholas Barry
(*pro hac vice*)
America First Legal Foundation
611 Pennsylvania Ave, SE #231
Washington, DC 20003

Telephone: (615) 431-9303
Facsimile: (513) 216-9882
nicholas.barry@aflegal.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2023, I served a copy of the foregoing via the Court's ECF system, which notifies all counsel of record.

s/ Joseph P. Ashbrook
Joseph P. Ashbrook